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Attorneys for Defendants

OHANA MILITARY COMMUNITIES, LLC

FOREST CITY RESIDENTIAL MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PLAINTIFFS CARA BARBER,
MELISSA JONES, MELISSA
STREETER, KATIE ECKROTH, BOB
BARBER, TIM JONES, AND RYAN
ECKROTH, On Behalf of Themselves
and All Others Similarly Situated,

Class Plaintiffs,

CIVIL NO. 14-00217 HG-KSC

DEFENDANTS OHANA
MILITARY COMMUNITIES, LLC
AND FOREST CITY
RESIDENTIAL MANAGEMENT,
LLC'S *EX PARTE* APPLICATION
FOR LEAVE TO FILE UNDER
SEAL (1) THEIR *EX PARTE*

vs.

OHANA MILITARY COMMUNITIES,
LLC, FOREST CITY RESIDENTIAL
MANAGEMENT, INC.; and DOE
Defendants 1-10,

Defendants.

APPLICATION TO UNSEAL A
PORTION OF THE TRANSCRIPT
OF THE AUGUST 15, 2016
EVIDENTIARY
HEARING, (2) THE
DECLARATION OF RANDALL C.
WHATTOFF THERETO, AND
(3) EXHIBITS A–F THERETO;
[PROPOSED] ORDER GRANTING
DEFENDANTS OHANA
MILITARY COMMUNITIES, LLC
AND FOREST CITY
RESIDENTIAL MANAGEMENT,
LLC’S *EX PARTE* APPLICATION
FOR LEAVE TO FILE UNDER
SEAL (1) THEIR *EX PARTE*
APPLICATION TO UNSEAL A
PORTION OF THE TRANSCRIPT
OF THE AUGUST 15, 2016
EVIDENTIARY
HEARING, (2) THE
DECLARATION OF RANDALL C.
WHATTOFF THERETO, AND
(3) EXHIBITS A–F THERETO;
CERTIFICATE OF SERVICE

**DEFENDANTS OHANA MILITARY COMMUNITIES, LLC AND
FOREST CITY RESIDENTIAL MANAGEMENT, LLC’S
EX PARTE APPLICATION FOR LEAVE TO FILE UNDER SEAL
(1) THEIR EX PARTE APPLICATION TO UNSEAL A PORTION OF
THE TRANSCRIPT OF THE AUGUST 15, 2016 EVIDENTIARY
HEARING, (2) THE DECLARATION OF RANDALL C. WHATTOFF
THERE TO, AND (3) EXHIBITS A–F THERETO**

Defendants Ohana Military Communities, LLC (“Ohana”) and Forest City Residential Management, LLC, successor by conversion to Forest City Residential Management, Inc. (“Forest City”) (collectively “Defendants”) hereby apply, *ex parte*, to seal their *Ex Parte* Application to Unseal a Portion of the Transcript of the August 15, 2016 Evidentiary Hearing, the Declaration of Randall C. Whattoff, and Exhibits A–F thereto (collectively, the “Application to Unseal”).

As discussed at length in the Application to Unseal, the Application to Unseal discusses a matter currently proceeding in a confidential forum. In order to protect the confidentiality of that proceeding, the Application to Unseal must be submitted under seal. In addition, Defendants’ Application to Unseal quotes and discusses the August 15, 2016 Transcript of Proceedings before the Honorable Helen Gillmor. The portion of the transcript discussed is currently under seal and is the subject matter of the Application to Unseal.

This Application is brought pursuant to Rules 5.2(d) and 7 of the Federal Rules of Civil Procedure; the rules on confidentiality cited in the Application to Unseal; and Rule 83.12 of the Local Rules of the United States

District Court for the District of Hawai‘i. This Application is supported by the Application to Unseal, the attached declaration thereto, and the records and files herein, and such further evidence and arguments that might be presented on this matter.

Legal Standard

“[C]ourts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The Ninth Circuit recognizes “a strong presumption in favor of access to court records.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

To overcome this presumption, the party seeking to seal records bears the burden of meeting the “good cause” or “compelling reasons” standard. *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir. 2016). In determining which standard applies, the focus is on “whether the motion at issue is more than tangentially related to the underlying cause of action.” *Id.* If the motion at issue is not related or tangentially related to the merits of the case, the good cause standard applies. Because the motion here does not relate to the merits of the case, it is subject to the “good cause” standard.

Basis for This *Ex Parte* Application

The Application to Unseal discusses and quotes from a matter that is currently proceeding in a confidential forum. That matter cannot be discussed in more length here without disclosing the confidential nature of the proceeding, but the issue is discussed at length in the Application to Unseal. The confidential nature of that proceeding, and the rules protecting the confidential nature of that proceeding, warrant sealing the Application to Unseal.

In addition, the Application to Unseal discusses Defendants' motion for preliminary injunction on the issue of whether Plaintiff Cara Barber breached certain provisions in the parties' confidential settlement agreement in *Cara Barber, et al. v. Ohana Military Communities LLC, et al.*, Civil No. 14-00217-HG-RLP. Because the preliminary injunction motion addressed this confidential issue, portions of the transcript were sealed by the Court.

For the foregoing reasons, Defendants request that the Court seal Defendants' *Ex Parte* Application to Unseal a Portion of the Transcript of the August 15, 2016 Evidentiary Hearing, the Declaration of Randall C. Whattoff, and Exhibits A–F thereto.

DATED: Honolulu, Hawai'i, December 7, 2016.

/s/ Randall C. Whattoff

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